IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 142 OF 2006.

Vishnu Narayan Deshmukh & ors. ... Appellants.
Versus.
Inayat Husen Gulabsaheb Sayyed
and others. ... Respondents.

Shri S.S.Patwardhan for the Appellants.

Shri R.V.More for the Respondents Nos.1 to 3.

CORAM : ABHAY S.OKA, J.

DATED : 26th July, 2006.

P.C.:

1. Heard the learned Advocates appearing for the parties. The Appellants are the original Defendants Nos.4 to 6. The suit filed by the original Plaintiffs was decreed by the trial Court holding that the Plaintiffs are having 21/48 share. The trial Court held that the legal representatives of the original Defendants Nos.1 and 2 are having 27/48 share in the suit properties. The Appellate Court has confirmed the shares as fixed by the trial Court. So far as the present Appellants are concerned, admittedly they are the purchasers of the properties from the Defendant No.1. The Appellate Court has held that the transaction effected in favour of the Appellants was hit by the principles of lis-pendense.

2. Shri Patwardhan appearing for the Appellants submitted that the Plaintiffs have not registered any notice as required by section 52 of the Transfer of

Property Act, 1882 as amended by Bombay amendment. He made submissions on merits as regards the will allegedly executed by Hasuabi. Shri Patwardhan also submitted that the suit was clearly barred by law of limitation and the Appellate Court has not dealt with the said aspect. He submitted that in view of section 3 of the Limitation Act, 1963 the Appellate Court was duty bound to consider the submissions based on bar of limitation.

3. I have considered the submissions. So far as the first submission is concerned the registration of lis-pendense is not necessary as the property affected by the suit is not situated within the presidency town of Mumbai. The suit property is admittedly purchased by the Appellants during the pendency of the suit. Hence section 52 will squarely apply. So far as the issue of limitation is concerned, the trial Court in paragraph 29 of the Judgment has recorded submission made on behalf of the Appellants that as the property was purchased on 30th April 1992, the original Plaintiff ought to have claimed relief against the Appellants. So far as this aspect is concerned, the trial Court was right in rejecting the said contention as the present Appellants have purchased the property during the pendency of the suit. So far as the bar of limitation which was allegedly applicable to the suit is concerned, it was for the contesting Defendants to raise the plea of adverse possession. In the absence of the said plea, it

cannot be said that the rights of the original Plaintiffs are defeated by limitation. Therefore, no fault can be found with the decrees passed by the Courts below. There is no merit in the Appeal. The Second Appeal is dismissed with no order as to costs.

Judge.